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SUPREME COURT, U.S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

NO. 80-6504

JOHN T. REED,

Petitioner

vs.

CARL AJELLO, ATTORNEY
GENERAL OF CONNECTICUT,

Respondent.

BRIEF IN OPPOSITION TO A PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Linda K. Lager, Esquire
Assistant State's Attorney
235 Church Street
New Haven, CT 06510
(203) 789-7894
Counsel for Respondent.

TABLE OF AUTHORITIES

CASES

Cato v. Smith, 104 F.2d 885 (9th Cir.), cert. denied, 308 U.S. 608 (1939) 5

County of Los Angeles v. Davis, 440 U.S. 625 (1979) 7

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Singleton v. Wulff, 428 U.S. 106 (1976) 4, 6

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OPINIONS BELOW

The unreported decision and judgment of the United States District Court for the District of Connecticut, dated September 10 and 11, 1980, appears in the Appendix at pages A-1 - A-4.

The United States District Court's grant of petitioner's motion for leave to appeal in forma pauperis, dated October 17, 1980, appears in the Appendix at page A-5.

The United States District Court's order denying a certificate of probable cause, dated December 16, 1980, appears in the Appendix at page A-7.

The United States Court of Appeals for the Second Circuit's denial of a motion for certificate of probable cause, dated February 18, 1981, appears in the Appendix at page A-8.

The opinion of the Connecticut Supreme Court in the direct appeal from petitioner's murder conviction, reported at 174 Conn. 287, 386 A.2d 243 (1978), appears in the Appendix at pages A-9 - A-20

JURISDICTION

It is not clear whether the petitioner is invoking this court's jurisdiction under 28 U.S.C. §1254 to seek review of the United States District Court's denial of this petition for writ of habeas corpus or seeking this court to issue a writ of habeas corpus pursuant to 28 U.S.C. §§2241(a) and 2254(a). In either event, the respondent respectfully submits that the petition should be denied for reasons amplified below.

QUESTIONS PRESENTED

(1) Did the United States District Court correctly conclude that the Connecticut detainer based on petitioner's 1971 murder conviction was valid because the State of Connecticut had personal and subject-matter jurisdiction of the petitioner at the time of his trial?

(2) Has the petitioner's voluntary waiver of extradition to the State of Connecticut on May 2, 1981 rendered moot his claims concerning extradition to the detaining authority?

STATEMENT OF THE CASE

In 1978 the petitioner filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Georgia which was transferred by that court to the District of Connecticut on April 27, 1979 and assigned civil number N79-131. He subsequently filed a petition for a writ of mandamus with the United States District Court for the District of Connecticut on May 11, 1979, assigned civil number N79-130, which was construed as a petition for writ of habeas corpus. Thereafter the United States District Court consolidated the two cases and on September 10, 1980 issued a memorandum of decision denying the petition. Both the District Court and the United States Court of Appeals denied certificates of probable cause to appeal.

The following facts, which shed some light on the status of the petitioner's custody, were before the District Court: On September 3, 1969 the New Haven, Connecticut Police Department arrested the petitioner on state murder charges and he was committed to state jail in New Haven. On September 17, 1969, after the petitioner had been indicted for the crime of murder by a state grand jury, the petitioner was transferred to the Bridgeport, Connecticut Community Correctional Institution. He was at the Bridgeport Community Correctional Institution until April 12, 1970, when he escaped. During this period of time, petitioner was in state custody.

While he was in state custody, he was brought to trial on federal bank robbery charges, for which he had been arrested on July 27, 1969. The trial was held in the United States District Court for the District of Connecticut in New Haven from January 13, 1970 through January 21, 1970 and petitioner's presence was apparently obtained by the federal authorities through a writ of habeas corpus ad prosequendum. After the guilty verdict, a presentence investigation was ordered and petitioner was returned to state custody. The petitioner was sentenced in the bank robbery case on October 2, 1970. It is apparent that some of the delay between verdict and sentence

can be attributed to petitioner's escape from the Bridgeport Community Correctional Institution on April 12, 1970.

The petitioner was at large from the day of his escape until July 16, 1970 when he was arrested by the United States Marshal in Newark, New Jersey on another pending Connecticut bank robbery charge, which was different from the one that had already been tried in federal court. On July 16, 1970, petitioner was committed to federal custody by a federal magistrate, in lieu of bond. On August 18, 1970, petitioner was transferred to the federal correctional institution at Danbury, Connecticut as a United States Marshal's "hold-over" prisoner. A prisoner on "hold-over" status can be transferred to another federal institution and can also be turned over to state authorities for prosecution. Federal records indicate that as of August 18, 1970, petitioner had been convicted of one federal robbery charge and had a second federal bank robbery charge and a state murder charge pending.

On March 8, 1971, petitioner was transferred to the Connecticut Correctional Institution at Somers from the federal correction institution at Danbury. Petitioner was tried on the state murder charge in May, 1971 and was sentenced to life imprisonment on June 18, 1971. He filed his appeal to the Connecticut Supreme Court on July 1, 1971. His conviction was affirmed by the Connecticut Supreme Court on February 28, 1978. The State of Connecticut lodged its detainer mittimus against the petitioner on March 31, 1978.

After his sentencing in the Connecticut Superior Court the petitioner was transferred to federal custody and from June 26, 1971 until May, 1980 he was serving the sentence imposed by the federal court on October 2, 1970 at the United States Penitentiary in Georgia. In May, 1980 he was transferred to Marion, Illinois. (App. pp. A21 - A22). After a hearing he was granted parole to the actual physical custody of detaining authorities only, effective May 2, 1981. (App. p. A-23). On May 1, 1981, the petitioner waived extradition to the State of Connecticut and he was released to the Connecticut authorities on May 2, 1981. (App. pp. A25 - A26). He is presently incarcerated at the Connecticut Correctional Institution, Somers, serving his life sentence on the state murder conviction.

REASONS FOR DENYING THE WRIT

The sole issue decided by the United States District Court is whether the State of Connecticut had personal jurisdiction over the petitioner to validate his state conviction and the detainer lodged against him. The District Court's decision is premised upon and fully supported by a long line of cases decided by this Court. E.g., Stone v. Powell, 428 U.S. 465, 485 (1976); Frisbie v. Collins, 342 U.S. 519, 522 (1952); Ker v. Illinois, 119 U.S. 436 (1886). Since the petitioner failed to pursue and the district court did not decide any claims concerning an extradition hearing prior to transfer from federal custody to the custody of the State of Connecticut, this court should refrain from addressing the issue. Singleton v. Wulff, 428 U.S. 106 (1976). Moreover, the petitioner's voluntary waiver of extradition has rendered moot any challenges of the extradition process he may wish to make.

I. THE DISTRICT COURT DID NOT DECIDE THE FEDERAL QUESTION IN THIS CASE IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT NOR IS THE QUESTION ONE WHICH IS UNSETTLED

The specific claim made by the petitioner in the district court was that since he was not transferred to state custody in 1971 pursuant to a written request for temporary custody under the Interstate Agreement on Detainers, 18 U.S.C. App. §2 Art. IV(a) or by writ of habeas corpus ad prosequendum, the State of Connecticut lacked jurisdiction over his person, voiding his murder conviction and the state detainer based on it. Previously in the state courts, the petitioner had attacked the state's jurisdiction on the ground that he could not be tried on state charges until his federal appeal was concluded. (App. p. A-11).

After his escape from state custody in April, 1970, the petition was returned to the State of Connecticut and was physically present in the state, albeit in federal custody, from August 18, 1970 until March 8, 1971 when he was transferred to the Connecticut Correctional Institution at Somers. He was tried on the state murder charge in May, 1971. Even assuming that the transfer from the federal correctional institution at Danbury, Connecticut to the state correctional institution at Somers, Connecticut was illegal,

the constitution does not require that the accused's presence in court be obtained lawfully. Frisbie v. Collins, 342 U.S. at 522.

The Connecticut Superior Court had jurisdiction to try petitioner. It had subject matter jurisdiction over the offense. The petitioner was lawfully arrested in Connecticut and presented before the state court on a state indictment. Until the date of his escape from the Bridgeport Community Correctional Institution, the petitioner was in state custody on the pending state charge. Petitioner's escape, which deprived the State of Connecticut of physical custody of petitioner, did not deprive the state of jurisdiction. Once the petitioner was returned to state custody by the federal authorities, he could be tried, convicted, sentenced, and imprisoned. Yant v. Blackwell, 396 F.2d 808 (5th Cir. 1968) cert. denied, 393 U.S. 1033 (1969); United States v. Fenno, 167 F.2d 593, 595 (2d Cir.) cert. dismissed, 335 U.S. 806 (1948); Cato v. Smith, 104 F.2d 885, 886 (9th Cir.) cert. denied, 308 U.S. 608 (1939). Moreover, the federal authorities could have merely "loaned" petitioner to the State of Connecticut for trial on the pending charges, see In re Liberatore, 574 F.2d 78, 89 (2d Cir. 1978); and such temporary transfer would be sufficient to give the court jurisdiction over petitioner's person.

All the courts that have considered the issue correctly rejected the petitioner's claim that the state court lacked jurisdiction. As a matter of comity, one sovereign may surrender custody or temporarily waive its right to exclusive jurisdiction of a person by delivering him to another sovereign for trial. Montos v. Smith, 406 F.2d 1243, 1245 (5th Cir. 1976); Strand v. Schmittroth, 251 F.2d 590, 597 (9th Cir), cert. dismissed, 355 U.S. 886 (1957). The petitioner had no standing to object to one sovereign's waiver of custody. Ponzi v. Fessenden, 258 U.S. 254, 260 (1922). Since the petitioner was physically present in the State of Connecticut, none of his rights were violated by the federal authorities' willingness to deliver him to the state authorities without requiring issuance of a writ habeas corpus ad prosequendum. DeLong v. United States, 474 F.2d 719 (5th Cir. 1973).

Moreover, the Interstate Agreement on Detainers, 18 U.S.C. App., 84 Stat. 1394-1403 (1970), is inapplicable in this case. Initially, the United States did not become a party to that agreement until March 9, 1971,

the day after the petitioner was transferred to the Connecticut Correctional Institution. Thus, the State of Connecticut could not have proceeded under the provisions of the agreement. Additionally, since no detainer was filed by the State of Connecticut, the provisions and protections of the agreement were not activated. United States v. Mauro, 436 U.S. 340, 343 (1979). Finally, any protections which the agreement would have accorded the petitioner were provided de facto. The two limitations placed on the prosecuting authority by Art. IV(c) and (e) were satisfied. The petitioner was tried on the outstanding state charges within 120 days of his "arrival," i.e., his transfer to the state institution. Id. at 352.

Thus, since that the power to try a criminal defendant is not lost even if he is brought within a jurisdiction illegally and the circumstances involving the petitioner's transfer to Connecticut custody were reasonable, the petitioner has not presented an unsettled federal question. The district court correctly applied controlling decisions of this Court in concluding that the petitioner's 1971 murder conviction and the detainer based on it were valid.

II. THE ISSUES THE PETITIONER SEEKS TO RAISE CONCERNING HIS EXTRADITION ARE MOOT

The petitioner appears to be challenging any transfer to the State of Connecticut on the alternative ground that he was denied an extradition hearing in the State of Georgia. See Cuyler v. Adams, U.S. , 101 S.Ct. 703, 66 L.Ed. 2d 641 (1981). This Court should not decide what relief, if any, is warranted for this alleged impropriety because the petitioner failed to pursue this issue before the district court, did not introduce any evidence to support the claim, and the district court did not decide it. This court's policy has been to refrain from deciding unaddressed issues unless the proper resolution is beyond doubt or an injustice might otherwise result. Singleton v. Wulff, 428 U.S. at 121; Lawn v. United States, 355 U.S. 339, 362-63, n.16 (1955). The petitioner's case is not the exceptional one justifying the exercise of this court's discretionary power to issue writs of habeas corpus in aid of its appellate jurisdiction. E.g., Dixon v. Thompson, 429 U.S. 1080 (1977); Ex parte Abernathy, 320 U.S. 219 (1943)

Moreover, the petitioner's voluntary waiver of extradition on May 2, 1981 has cured any alleged deficiencies associated with the earlier extradition attempt in Georgia. After the petitioner was transferred from Georgia to Illinois the federal authorities gave him a new parole date and he would have been accorded an extradition hearing, if he desired one. (App. pp. A-21 - A-22). Instead, he chose to waive extradition and is currently at the Connecticut Correctional Institution serving his state sentence.

"Where by an act of the parties . . . the existing controversy has come to an end, the case becomes moot and should be treated accordingly." United States v. Alaska S.S. Co., 253 U.S. 113, 115 (1920). This court's decision on the extradition issue cannot affect the petitioner's rights or status. See DeFunis v. Odegaard, 416 U.S. 312 (1974); North Carolina v. Rice, 404 U.S. 244, 246 (1971). There can be no reasonable expectation that the alleged violation will recur and the petitioner's voluntary waiver has eradicated the effects of the alleged violation. County of Los Angeles v. Davis, 440 U.S. 625 (1979). Accordingly, this court should decline jurisdiction on the ground of mootness.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

Linda K. Lager
Assistant State's Attorney
Counsel for Respondent, Carl Ajello

CERTIFICATION

This is to certify that a copy of this brief in opposition to petition for writ of certiorari and attached appendix were mailed to John T. Reed, pro se, Box 100, Somers, Connecticut 06071, this 2nd day of July, 1981.

Linda K. Lager
Assistant State's Attorney
235 Church Street, Room 216
New Haven, CT 06510
Telephone #789-7894